

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

Crl.MC.No. 2761 of 2007()

CRIME NO. 45/06 OF VENMONY POLICE STATION
CMP.3946/2006 of JUDL.MAGISTRATE OF FIRST CLASS, MAVELIKKARA
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PETITIONERS: ACCUSED NOS 1 & 2

1. SREEDHARAN, AGED 75 YEARS,
S/O. SANKARAN, GURUVINPARAMBIL VEEDU,
KADAIKKADU MURI, CHERIYANADU VILLAGE,
CHENGANNUR.
2. SMT. SARASAMMA, AGED 65 YEARS,
W/O. SREEDHARAN, GURUVINPARAMBIL VEEDU,
KADAIKKADU MURI, CHERIYANADU VILLAGE, CHENGANNUR.

BY ADV. SRI.S.HARIKRISHNAN
SRI.C.UNNIKRISHNAN (KOLLAM)

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.
2. THE SUB INSPECTOR OF POLICE,
VENMONY POLICE STATION, CHENGANNUR.

BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 28/09/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

CrI.M.C.No. 2761 of 2007

Dated this the 28th day of September, 2007

ORDER

The petitioners face indictment in a prosecution for offences punishable, inter alia, under Sections 498A and 306 r/w. 34 I.P.C. Investigation is complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate. The petitioners have come before this Court with this petition with a prayer that powers under Section 482 Cr.P.C. may be invoked to quash the proceedings against them.

2. What are the reasons? The learned counsel for the petitioners raised three contentions. The mother of deceased had filed a private complaint. The said complaint was forwarded by the Magistrate to the police under Section 156(3) Cr.P.,C. F.I.R. was thereupon registered by the Mavelikkara police. In the course of investigation, it was realised that Mavelikkara police station is not the police station having jurisdiction. It was transferred for investigation to Venmani police station. The Venmani police had completed the investigation and had filed the final report. Cognizance was taken on that final report. The Venmai police station does not

fall within the jurisdiction of J.F.C.M. Mavelikkara, who had made the initial reference under Section 156(3) Cr.P.C. It is therefore contended that reference under Section 156(3) Cr.P.C. is without legal authority and the entire proceedings may be quashed for that reason.

3. The second contention urged is that initially a crime was registered under the caption 'unnatural death' and by Annex. A5 report of the Investigating Officer before the Sub Divisional Magistrate the said crime has been closed and report accepted by the S.D.M. In view of the acceptance of such report under Section 174 Cr.P.C. by the S.D.M, the subsequent investigation and the filing of charge sheet in this case are not justified and are liable to be quashed, it is urged.

4. The third and the final contention raised is that there are incongruities between the allegations raised in the complaint filed by the complainant before the learned Magistrate and the conclusions reached by the Investigating Officer after completing the investigation. According to the learned counsel for the petitioners, the allegations in the complaint reveal only threat and intimidation against the deceased, which would have attracted only an offence under Section 506 I.P.C., whereas in the final

report different allegations are raised about abetment to commit suicide. For this reasons also the prosecution is liable to be quashed, it is urged.

5. I find no merit in any of these three contentions. The Magistrate making a reference under Section 156(3) Cr.P.C. to the police cannot be said to lack jurisdictional competence even if it were found later on, that the police station to which reference was made did not have territorial jurisdiction to deal with the matter. Even assuming that a complainant had directly lodged a complaint before such a police station, which had no jurisdiction, the procedure to be followed is very definite and clear - that such police officer has to transfer the complaint to the police station having jurisdiction. Even if the complainant had directly filed the complaint before the police, the police would have been perfectly justified in transferring the F.I.R. to the police station having jurisdiction on realising that the jurisdiction rightly vests in such transferee police station. Merely because the learned Magistrate had made the initial reference, no change in the situation can be said to result. More over, the alleged inadequacy is not one which would justify the invocation of the jurisdiction under Section 482 Cr.P.C.

6. Annex.A5 is the report submitted under Section 174 Cr.P.C. It is crucial that no F.I.R. was at all registered as known to law even though the report under Section 174 Cr.P.C. is made to the Court in the F.I.R. form. Only when there is allegation of a cognizable offence need an F.I.R. be registered. In a case of unnatural death, the report is made to Court in the prescribed F.I.R. form. It is absolutely incorrect to say that the report under Section 174 Cr.P.C. made to the court is an F.I.R. No cognizable offence is alleged in the crime registered under Section 174 Cr.P.C. and in these circumstances the fact that Annex.A5 report, after Section 174 Cr.P.C. enquiry has been submitted to the S.D.M. and accepted by him, cannot in any way affect the competence of the court to proceed with the present final report alleging offences under Sections 498A and 306 I.P.C. This second contention must also have fail.

7. The final contention cannot also be accepted. At worst, the petitioner shall be entitled to make use of such incongruent statements which are allegedly available in the complaint filed by the mother of the deceased for the purpose of contradicting the witness in the course of trial. The mere fact that the final conclusions are not all meticulously supported by the averments in the complaint cannot be reckoned as sufficient reason

to invoke the jurisdiction under Section 482 Cr.P.C. and quash the proceedings.

8. I am, in these circumstances, satisfied that the prayer for quashing of proceedings is not justified. I may hasten to observe that I have not chosen to express any final opinion on any disputed facts. The scanning of materials before this court was conducted for the limited purpose of ascertaining whether the jurisdiction under Section 482 Cr.P.C. can or need be invoked. I only intend to take the view that at the moment and with the available inputs, there is absolutely no warrant for the invocation of the powers under Section 482 Cr.P.C. The petitioners shall be at liberty to raise all their relevant contentions in the course of the trial before the court below.

9. This Crl.M.C. is accordingly dismissed with the above observations.

(R. BASANT)
Judge

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